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State of Vermont
Public Service Board

September 21, 2001

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Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., SW
Suite TW–A325
Washington, DC 20554

Re: Vermont Public Service Board's Comments in Opposition to Verizon Wireless' Petition Pursuant To 47 U.S.C. § 160 For Partial Forbearance From The Commercial Mobile Radio Services Number Portability Obligation;
WT Docket No. 01-184/CC Docket No.99-200

Dear Ms. Salas:

Enclosed for filing with the Federal Communications Commission in the above-referenced proceeding is a copy of the comments of the Vermont Public Service Board. I have served copies of these comments on the attached service list.

Sincerely,

Gregg C. Faber
Utilities Analyst

Enclosure

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List ABCDE

Before the
Federal Communications Commission
Washington , D.C. 20554

In the Matter of Verizon Wireless' Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance rom the Commercial Mobile Radio Services Number Portability Obligation	))))	WT Docket No. 01-184 CC Docket No. 99-200

COMMENTS OF THE VERMONT PUBLIC SERVICE BOARD'S IN OPPOSITION TO THE PETITION OF VERIZON WIRELESS' PURSUANT TO 47 U.S.C. § 160 FOR PARTIAL FORBEARANCE FROM THE COMMERCIAL MOBILE RADIO SERVICES NUMBER PORTABILITY OBLIGATION

Gregg Faber, Utilities Analyst
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INTRODUCTION

The Vermont Public Service Board ("Vermont PSB") hereby files these comments in opposition to the *Petition of Verizon Wireless Pursuant To 47 U.S.C. § 160 For Partial Forbearance From The Commercial Mobile Radio Services Number Portability Obligation* ("Verizon's Petition") submitted to the Federal Communications Commission ("Commission") on August 2, 2001. In opposing Verizon's Petition, the Vermont PSB supports the underlying reasoning and remedies discussed in the comments in opposition to Verizon's Petition filed by the State Coordination Group on September 21, 2001. In sum, the Vermont PSB requests that the Commission reject Verizon's Petition in its entirety.

The Vermont PSB urges the Commission to require the Verizon Wireless to implement local number portability ("LNP") pursuant to the Commission's authority discussed in its *First Report and Order*, and to recognize that States such as Vermont are not preempted from establishing LNP- related rules for CMRS providers such as Verizon Wireless as long as the State rules do not conflict with the Commission's rules.[1] In the alternative, if the Commission decides to forbear from imposing number portability obligations on Verizon Wireless, we ask that the Commission's decision explicitly affirm that States such as Vermont are able to impose such rules if the states so decide.

I. BECAUSE VERIZON WIRELESS DOES NOT AND CANNOT MEET THE "SECTION 10 STANDARDS" WHICH REQUIRE THE COMMISSION TO FORBEAR FROM APPLYING ANY REGULATION OR PROVISION OF THE ACT TO A TELECOMMUNICATIONS CARRIER, THE COMMISSION SHOULD IMPOSE LOCAL NUMBER PORTABILITY REQUIREMENTS ON VERIZON WIRELESS AND FURTHER RECOGNIZE THAT STATES ARE NOT PREEMPTED FROM IMPOSING ADDITIONAL REQUIREMENTS THAT ARE NOT IN CONFLICT WITH COMMISSION RULES.

The Vermont PSB believes that Verizon Wireless does not and cannot meet the "Section 10 Standards" which require the Commission to forbear from applying any regulation or provision of the Telecommunications Act to a telecommunications carrier if the Commission determines that:

1. Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

2. Enforcement of such regulation or provision is not necessary for the protection of

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1. *Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order*, 11 FCC Rcd 8352 (1996). The Commission has recognized that it possesses " authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability...." *Id.* at ¶153. The Commission has also indicated that it has the authority to "make available to all people of the United States 'a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.'" *Id.* Finally, it has also recognized that section 4(i) grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended], as may be necessary in the execution of its functions." *Id.*

consumers; and

3. Forbearance from applying such provision or regulation is consistent with the public interest.[2]

Verizon states in its petition that, "Customer choice is not impeded by personal attachment to a wireless phone number"[3] and points to a low "churn" level in the wireless industry as proof of its assertion.[4] However, a closer look at the situation suggests the opposite. We suspect that it is the cellular industry's use of long-term contracts and especially the inability of customers to keep their phone numbers that drives the current low turnover rate.

We reach this conclusion for the following reasons. If customers were able to switch their carriers and take their number with them, they certainly would be able to avoid considerable costs. For instance, they would avoid the need to (1) switch their company personnel business cards, (2) their letter-head, (3) and their advertizing in print and other media. Without the ability to take their number with them, a company would need to make all these changes in order to reflect a new number. On the other hand, an ability to migrate from one provider to another with ones original number would avoid these, otherwise, needless costs. The inability to retain one's wireless phone number, consequently, obstructs consumer choice in wireless carriers and necessarily hinders competition in that industry.

Therefore, as we consider the Section 10 Standards, we reach the following conclusions:

(1) Service that does not offer number portability is not just and reasonable service.

(2) Without Commission enforcement of the portability obligation, consumers have no other protection against what, in effect, becomes a restraint of trade, *i.e.*, the ability to easily migrate to and take service with another more attractive provider.

(3) It is in the public interest, and within the power of the Commission, to encourage the growth of a competitive telecommunications industry, and in so doing, avoid favoring one technology over another.[5] We, consequently conclude that forbearance from applying the number portability obligation upon Verizon Wireless is **not** in the public interest.[6]

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2. § 10, 47, U.S.C. § 160.

3. Verizon Wireless petition, Docket No. WT 01-184 at 29.

4. *Id.*

5. We note that the Commission required wireline carriers in the top 100 MSAs to deploy LNP on a schedule that concluded December 31, 1998. *First Report and Order* at ¶ 77. Wireline customers have the option to change carriers but retain their assigned telephone number, as long as the customers remain physically within their local exchange. If the wireless industry is granted forbearance, wireless customers will not have the same opportunity.

6. The Vermont PSB reaches these conclusions both independently, but also on the basis of the conclusions reached by the Commission in its *First Report and Order* where it wrote: "We conclude that the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services." *First Report and Order* at ¶ 153.

II. IN THE ALTERNATIVE, IF THE COMMISSION DECIDES THAT PERMANENT FORBEARANCE IS APPROPRIATE IN THIS CONTEXT, THEN THE COMMISSION SHOULD, LIKEWISE, RECOGNIZE IN ITS DECISION THAT THE QUESTION OF WHETHER VERIZON WIRELESS SHOULD IMPLEMENT LNP IS ALSO A STATE LAW ISSUE THAT IS UP TO EACH STATE COMMISSION TO CONSIDER AS THAT COMMISSION SEES FIT.

As revised by the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), Section 332(c)(3) of the Communications Act of 1934 prohibits states from regulating CMRS rates and entry.[7] The same statute, however, expressly reserves to states the authority to regulate the "other terms and conditions of commercial mobile service," although it does not specify what, precisely, is included within the purview of "other terms and conditions." Section 332 provides in pertinent part:

> Notwithstanding sections 152(b) and 221(b) of this title, no state or local government shall have any authority ***to regulate the entry of or the rates charged*** by any commercial mobile service or any private mobile service, except that this paragraph ***shall not prohibit a state from regulating the other terms and conditions*** of commercial mobile services.[8]

The plain language of Section 332 reserves state authority over terms and conditions while explicitly proscribing state authority to regulate entry and rates. Thus, this section expressly preserves state authority over intrastate CMRS, except for rate and entry regulation.[9]

In addition to the statutory language, legislative history compels the same conclusion, *i.e.*, that Congress intended to reserve state authority, other than entry and rate regulation, over CMRS services. For instance, the House of Representatives Committee on Energy and Commerce, reporting on the House bill that was incorporated into the amended Section 332, noted that even where state rate regulation is preempted, states nonetheless may regulate other terms and conditions of commercial mobile radio services:

> By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only

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7. 47 U.S.C. § 151 *et seq.* § 6002(b)(2) of OBRA amends § 332(c) and (d) of the Communications Act of 1934, and the amended 47 U.S.C. § 332 contains the provisions regarding preemption. The Telecommunications Act of 1996 did not amend 47 U.S.C. § 332.

8. 47 U.S.C. § 332(c)(3)(A) (emphasis added).

9. *See also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)(there exists a presumption against Federal preemption, particularly in areas of historic state authority such as public utility regulation).

and not meant to preclude other matters generally understood to fall under "terms and conditions."[10]

Given the cooperative framework for the regulation of CMRS providers established by Congress, the Vermont PSB believes that Vermont has two alternative paths to pursue with respect to Verizon Wireless's Petition. One, if the Commission were to impose number portability obligations on Verizon Wireless, States such as Vermont would not be preempted from establishing local number portability- related rules for CMRS providers such as Verizon as long as the State rules do not conflict with the Commission's rules. Two, if the Commission were to forebear from imposing number portability obligations on Verizon Wireless, States such as Vermont would be able to impose such rules pursuant to their authority to "regulate "terms and conditions of service" expressly provided under section 332 of OBRA.[11]

Consequently, if the Commission decides to impose local number portability obligations upon Verizon Wireless, we request that the Commission recognize that States such as such as Vermont are not preempted from establishing LNP-related rules for CMRS providers such as Verizon, as long as the State rules do not conflict with the Commission's rules. If the Commission decides that permanent forbearance is appropriate in this context, then we urge the Commission to explicitly recognize in its decision that the question of whether Verizon Wireless should implement LNP is also an issue of state law that is up to each state utility commission to consider as that commission sees fit.

CONCLUSION

The Commission should require the Verizon Wireless to implement local number portability pursuant to the Commission's authority discussed in its *First Report and Order*, and to recognize that States such as such as Vermont are not preempted from establishing LNP-related rules for CMRS providers such as Verizon as long as the State rules do not conflict with the Commission's rules.[12] In the alternative, if the Commission decides to forbear from imposing number portability obligations on Verizon Wireless, we ask that the Commission's decision explicitly acknowledge that States such as Vermont are able to impose such rules if the states so decide.

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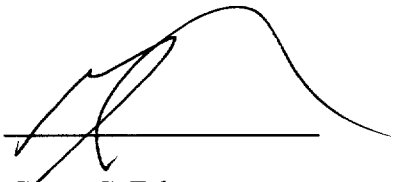
10. H.R. Rep. No. 111, 103 Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588.
11. 47 U.S.C. § 332(c)(3)(A) (emphasis added).
12. *Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order*, 11 FCC Rcd 8352 (1996).

Respectfully submitted this 21st day of September , 2001.

By: 

Gregg C. Faber
Utilities Analyst

CERTIFICATE OF SERVICE

I, GREGG FABER, CERTIFY THAT ON THIS 24TH DAY OF SEPTEMBER, 2001, THE VERMONT PUBLIC SERVICE BOARD MAILED A COPY OF THE FOREGOING POSTAGE PREPAID TO THE PERSONS LISTED BELOW:

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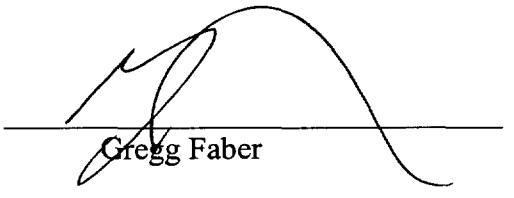
September 24, 2001



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